

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

FS MEDICAL SUPPLIES, LLC,

Plaintiff,

v.

Case No. 3:25-CV-00102-RJC-WCM

TANNERGAP, INC.; TANNER PHARMA UK
LIMITED; RAYMOND FAIRBANKS
BOURNE, aka “BANKS” BOURNE; and
MARY EVERETT WHITEHURST BOURNE
aka “MOLLY” BOURNE,

Defendants.

**TANNER DEFENDANTS’ RULE 12(b)(6)
MOTION TO DISMISS THE COMPLAINT**

Defendants TannerGAP, Inc. (“TannerGAP”) and Tanner Pharma UK Limited (“TPUK,” and together with TannerGAP, the “Tanner Defendants”) move that this Court dismiss or stay this action while FSMS I and II remain pending, or in the alternative, dismiss all claims for failure to state a claim, under Rule 12(b)(6) of the Federal Rules of Civil Procedure. In support of this Motion, the Tanner Defendants state as follows:

1. This Court should dismiss or stay this action under the prior pending action doctrine because it duplicates the already-pending FSMS I (Case No. 3:21-cv-501-RJC-WCM) and FSMS II (Case No. 3:23-cv-598-RJC-WCM) actions filed in 2021 and 2023 by Plaintiff FS Medical Supplies, LLC (“FSMS”). This Court has not yet determined whether it has subject matter jurisdiction in those actions. FSMS cannot circumvent that ruling by filing another action.

2. Statutes of limitation bar all FSMS's contract, UDTPA, and alter ego claims, and statutes of repose bar a substantial portion of its voidable transfer claims.
3. The UDTPA claim is subject to dismissal for the additional reason that FSMS has failed to state a claim. The claim is a flimsy retread of the UDTPA claim that this Court already dismissed with prejudice in FSMS I. FSMS's new allegations add nothing to warrant a different ruling.
4. This Court should dismiss the UVTA claims because the predicate contract and UDTPA claims fail for the reasons above. The UVTA claims against TPUK also fail because TPUK retains no interest in the property that FSMS seeks to recover.
5. The grounds for this Motion are further set forth in the accompanying Memorandum of Law.

WHEREFORE, the Tanner Defendants respectfully request that this Court grant their Motion and dismiss or stay this action under the prior pending action doctrine, or in the alternative, dismiss this action with prejudice under Rule 12(b)(6).

This the 13th day of March, 2025.

McGUIREWOODS LLP

By: /s/ Bradley R. Kutrow
Bradley R. Kutrow
N.C. State Bar No. 13851
Brian A. Kahn
N.C. State Bar No. 29291
Jessica O'Brien Peretz
N.C. State Bar No. 56679
201 North Tryon Street, Suite 3000
Charlotte, NC 28202-2146
Telephone: (704) 343-2049
Facsimile: (704) 343-2300
bkutrow@mcguirewoods.com
bkahn@mcguirewods.com
jperetz@mcguirewoods.com

Mark E. Anderson
N.C. State Bar No. 15764
MCGUIREWOODS LLP
501 Fayetteville Street, Suite 500
Raleigh, NC 27601
Telephone: (919) 755-6678
Facsimile: (919) 755-6699
manderson@mcguirewoods.com

Anne L. Doherty
N.C. State Bar No. 55494
MCGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219-3916
Telephone: (804) 775-7633
Facsimile: (804) 775-1061
adoherty@mcguirewoods.com

*Attorneys for Defendants TannerGAP, Inc.
and Tanner Pharma UK, Ltd.*